THE Pundit

Michigan Child Support Information

In 2003, Michigan ranked fourth in the country for collecting child support through income withholding. *Source: Federal Office of Child Support Enforcement.*

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Reflections

by John D. Ferry

Some time ago, I was asked by *PUNDIT* editors to reflect on the past 19 years that I have worked with the Michigan Judiciary, focusing, of course, on my work in the area of child support. I took on the challenge, knowing that there was plenty to report on and reflect on – the child support system is no stranger to change and evolution.

I could write about the finalization and implementation of child support guidelines, my first challenge after arriving on the scene. Or my second challenge, meeting Leonard Portnoy at a Friend of the Court Association Conference. I don't remember who introduced me, and that's probably a good thing. Or, the long and bumpy road to implementation of MiCSES; a multitude of policy and procedure memoranda; new legislator trainings, creation of the family division of the circuit court; child support program audits; going to Chicago with Jenny Barkey and Bill Bartels for the implementation of the federal child support recovery act (and the look of terror in Jenny's eyes when she saw the "puddle jumper" we were flying on); letters, charts, graphs and analyses from Bill Camden; child support workgroups; FOC Legislation Phase I and Phase II, countless legislative hearings; understanding and explaining FOC funding (can it be done?); the Non-Custodial Parent Workgroup; NCSEA meetings; ERICSA meetings; speaking at FOCA meetings with Wally "Rapid-fire" Dutkwoski, Doug Howard, Dee Van Horn, Dan Wright, Steve Capps, Ron Kollen; meetings with the Feds, a meeting with Justice Corrigan in January of 2001 regarding CSES and the incredible initiative to reach MiCSES certification that ensued…the list goes on.

What is most important, though, is the unparalleled dedication and passion of those men and women who work in Michigan's Friend of the Court offices around the state. When I was first introduced to the Michigan judiciary, then-State Court Administrator V. Robert Payant asked me to take on the task of finalizing the child support guidelines. As I studied the system, my first reaction was "how could this system work"? "How could child support service and enforcement be in the judiciary?" I soon came to appreciate that it not only worked, but that the system is unparalleled in the nation. That success, I have come to appreciate, is due partly to its placement in the judiciary and its comprehensiveness in addressing custody, parenting time and other non-economic issues in addition to financial support. However, that success could not be achieved without the hard-working people who work in the system.

It has been a privilege to work with all of you.

Michigan Family Support Council - 22nd Annual Training Conference

by Ellen Durnam, President of Michigan Family Support Council

The Michigan Family Support Council (MFSC) is proud to report another very successful Annual Training Conference, held last fall - October 13th,14th, and 15th. More than 500 child support professionals attended the workshops and plenary sessions held in Northern Michigan. An increased number of workshops allowed for a greater variety of presentations. Experts from across the country participated. They included representatives from the National Child Support Enforcement Association (NCSEA), Penn State University, the U.S. Department of Health and Human Services, the Michigan State Court Administrative Office, Michigan Friend of the Court offices, the Michigan Office of Child Support, the Prosecuting Attorney Association of Michigan, and many more. The Northern Michigan setting, the topics and sessions offered, and the many child-support expert presenters all contributed to the success of the conference.

The plenary session guest speakers included:

- Marilyn F. Stephen, IV-D Director of the Michigan Office of Child Support;
- Dr. Sherri Heller, Commissioner of the HHS Department's Office of Child Support Enforcement;
- Harvey Alston, motivational speaker; and
- Roger Reece, motivational speaker.

Marilyn Stephen spoke about the direction of Michigan's child support program and her future goals. Ms. Stephen's presentations are always well received by the conference attendees. She also participated in several workshops. Her support of the Michigan Family Support Council and the programs that the Council sponsors is greatly appreciated.

Dr. Sherri Heller presented an entertaining and informative explanation of the new National Child Support Strategic Plan. Not only did she provide insight into the direction of the national child support program for the next five years; she also sang her way into our hearts once again!

This MFSC conference introduced several exciting changes to the traditional format and content of these training conferences. They included an increase in the number of workshops and the addition of a third plenary session. A new publication provided information on the program agenda, workshop schedules, workshop descriptions, and presenter biographies. We also held our first silent auction fund-raiser, which was extremely successful. Over 40 items were donated and auctioned; $2,960.00 was collected and $1,480.00 was donated to Camp Highfields. The balance will be used for scholarships for attendance at future MFSC conferences.

Prior to the 2004 opening ceremonies, the MFSC State Board elected the officers for the 2004-2005 term. They are:

Ellen Durnan, President — **David Williams, Vice President**
Tom Miller, Treasurer — **Zennell Brown, Secretary**

The 2005 conference will also be held in October. The MFSC is already working onthe agenda, workshops, and speakers! Special thanks to all those who helped make the 2004 Training Conference such a huge success!

Kent County Citizen Advisory Committee

by John Cole, Kent County Friend of the Court

The law requiring counties to have a friend of the court (FOC) citizen advisory committee (CAC) was enacted as 1996 PA 366. It added the CAC requirement to the Friend of the Court Act. Some counties did form CACs soon after the 1996 law took effect. Many of these CACs discontinued after they were initially implemented. Recent legislation (2004 PA 210) amended the Friend of the Court Act by eliminating the mandate that required each county to have a CAC.

In Kent County, we have had a CAC since shortly after the 1996 law took effect. Our experience has been good from the outset and is getting better. The *Pundit* editor asked me to summarize that experience in this article.

"The CAC and our FOC office have a mutually supportive working relationship. . . a partner agency . . ."

The CAC and our FOC office have a mutually supportive working relationship. Naturally, the committee continues reviewing a random sample of all FOC grievances. If members of the CAC identify concerns within the grievance or the response, the members will contact me or a member of my staff to discuss them. I, and often members of my staff, attend CAC meetings to respond directly to any committee members or citizen's concerns.

I do not consider the committee's role to be either adversarial or punitive, nor do I view the committee as simply fulfilling an oversight function. I view the committee as almost a partner agency with the FOC office to assure quality services are provided our customers. In fact, in my view, I would like to view the committee as somewhat akin to the FOC local office board, working together to try to achieve the child support program goals and improve services to the families we come in contact with.

My goal is to try to keep the committee fully advised of all the work we do, any and all program changes that may occur, what the program's purposes and objectives are, and how our current performance levels compare to other counties. I also plan on introducing them to our budget development process this Spring, what we are requesting as an organization and what the funding will support. I am further encouraging them in a review of recent legislation just passed and what impact that has on the FOCs across the state and also to review any and all new bills now in the process of development for the same purpose. I also seek the committee's advice and assistance to support the office's needs and those of our clients. I would like the committee to share equally in our success and to share the burden of our failures and be involved in the development of the corrective action plans.

One of the more recent problems we have addressed with the committee are those involving "in pro per" motions. Many of our customers receive the forms for filing "in pro per" motions, but only about 50 percent, or less, follow through and actually file the motion. The remaining 50 percent do not have their issues properly addressed by the Court. For example, an arrearage continues to increase solely because no Motion to modify the order is ever filed. A member of our CAC and the Chief Judge, together with me and one of my staff, recently met with the Legal Assistance Center to see if the Center

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can assist those who want to file an "in pro per" motion. Unfortunately, the Legal Assistance Center, like many public agencies, is short on funds and may not have adequate staff to properly assist those clients in the long term. In the meantime, we are gathering data on how many of our customers are referred to the Legal Assistance Center, how many show up, how many do not, and then of the number that do, what percentage of "in pro per" motions are filed.

Limiting the committee's role to one of only reviewing grievances is perhaps one of the primary reasons why so many committees were never organized in the first place or discontinued soon after the initial legislation was enacted.

I have further reviewed some of our more major customer service problems with our committee. For example, we receive many complaints from customers who could not get through to us by telephone. Others say that they left messages that were not returned. To address this situation, we have installed a new phone system, and we are currently looking for software that can monitor our incoming and outgoing calls. The committee is regularly briefed on our progress in implementing these new features.

Another customer service example I've discussed with the committee is our lobby area traffic flow and that we'll want to be able to see everyone who may come in within five to ten minutes of their arrival, no long lines or excessive wait times. We have decided as a public agency that we should be open 8:00 to 5:00 everyday, permitting our customers to come in and see us and that the hours that we accept telephone calls are the same. This is not without its difficulty but for the time being we're managing it.

More recently, I had one of our CAC members speak at our FOC staff meeting to share the committee's thoughts with all our employees. The committee member expressed what a fine job he thought the FOC staff was doing. I want the staff to perceive the committee as a valuable resource that can be utilized to improve the office's performance. I think we are moving in that direction and I hope that my staff will begin to experience that as well.

In summary, I'm very happy with the direction in which the Citizen's Advisory Committee and the FOC office are moving together. I believe that the committee, our judges, the larger community, and our customers feel the same way. I want the committee to continue becoming more and more involved in our work and to advocate for the FOC office needs and even more importantly, the needs of our customers.

Cases in Brief

by State Court Administrative Office, Friend of the Court Bureau Staff

N.E. v *Hedges, et al* 391 F3d 832 (12/20/04)

The plaintiff father conceived a child with a then-unmarried woman. She allegedly gave him false assurances that she had taken adequate contraceptive measures. Years later, after the defendant mother had moved to Kentucky and married someone else, she filed a paternity action under Kentucky law and obtained a Kentucky state court's order requiring the plaintiff to pay child support. The father then filed this federal lawsuit challenging Kentucky's authority to require the payments. The U.S. District Court in Michigan rejected his arguments and imposed financial sanctions for bringing a frivolous claim. The Sixth Circuit now has affirmed both the dismissal and the sanctions, but the father's theory is interesting, and the Sixth Circuit considered the issues significant enough to warrant publishing its opinion. Two excerpts from that opinion appear below.

FIRST EXCERPT: "[Plaintiff] limits his appeal to a claim for injunctive relief based on a declaration that Kentucky paternity and child support laws are invalid. He also seeks an order enjoining [the Kentucky authorities] from enforcing child support orders entered in his case in Kentucky courts. Plaintiff makes a kind of 'fairness' or 'reciprocity' argument…. The plaintiff argues that the Kentucky paternity and child support laws are inconsistent with sexual and procreative 'privacy' rights recognized by the Supreme Court, e.g., **Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976); Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)**. The right to procreative privacy, he argues, 'includes the right to decide not to become a parent even after conception,' and 'must extend to both biological parents,' so that 'Kentucky's statutory scheme' must be invalidated because it 'imposes parenthood on biological fathers while denying them any right or opportunity to decide not to become a parent after conception.' His 'fairness' argument seems to be that he should receive this constitutional right in exchange for the woman's right to abort her pregnancy." 391 F3d at 834.

SECOND EXCERPT: "Plaintiff's argument is succinctly stated at p. 6 of his reply brief as follows: '[I]t is disingenuous to pretend that imposing a child support obligation is separate and distinct from forcing fatherhood on an unwilling male. Even if Kentucky eliminated all child support obligations tomorrow, its paternity laws would remain unconstitutional. It is the fact that Kentucky forced N.E. [plaintiff] to participate in paternity proceedings [that] proved his fatherhood that renders the statutory scheme unconstitutional. No one disputes that providing for the financial well-being of out-of-wedlock children is important, but Kentucky does not arrest random individuals off the streets and require each of them to financially support wards of the state; rather, Kentucky reserves that burden for those men it has forced to become fathers. The ONLY reason N.E. is forced to financially support minor E.D.L. is because of the finding of paternity. It was unconstitutional for Kentucky to force parenthood on N.E. Because the support obligation necessarily follows from the forced fatherhood, it is therefore unconstitutional

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for Kentucky to impose a child support order on N.E.; the issues are inextricably intertwined.' This argument appears to be based on arguments for new state legislation in a law review article, **Melanie McCulley, The Male Abortion: The Putative Father's Right to Terminate His Interests in and Obligations to the Unborn Child, 7 J.L. & POL'Y 1(1981)." 391 F3d at 835, n2**.

PUNDIT COMMENT: Those are interesting constitutional arguments; however, this newly published ***Hedges*** decision establishes that they will not carry the day before any court or agency within the Sixth Circuit (including Michigan).

". . . the Child Custody Act requires the trial court to independently determine what custodial placement is in the best interests of the children."

***Bayati* v *Bayati*, _____ Mich App _____ (12/14/04)**

The parties are the married parents of twins. The plaintiff filed for divorce. The parties agreed to "binding arbitration" of the case's disputed issues, which included child custody. The order for arbitration stated:

"IT IS FURTHER ORDERED that the following issues shall be submitted to binding arbitration in lieu of trial by Court:

(A) Child custody and parenting time;
(B) Child support;
…….
(G) Any other issues properly raised by the parties which would otherwise be within the jurisdiction of the circuit court; ….."

The arbitrator awarded custody to the defendant mother, and also approved her request to move with the children from Michigan to California. The circuit court entered an order based on the arbitrator's decision without independently considering the "best interests of the children criteria." That improper deference to the arbitrator's "best interests" ruling required that the Court of Appeals remand the case for further proceedings in the circuit court. ***Harvey v Harvey* 470 Mich 186, 187, 191-193 (2004)**. Before doing so, however, the COA also considered and rejected the plaintiff's arguments that: (1) the order for arbitration (quoted above) did not provide for arbitrating the change-of-domicile issue; and (2) the arbitrator had revealed his [ethnic] bias against Middle Eastern fathers. Excerpts from the COA's opinion follow:

EXCERPT [The requirement that the circuit judge conduct an independent review of the "best interests" criteria.]: "[T]he Michigan Supreme Court has specifically stated that no matter what type of alternative dispute resolution is used by the parties, the Child Custody Act requires the trial court to independently determine what custodial placement is in the best interests of the children. [Harvey] at 187. Because the trial court was required to review the best interests factors regarding custody and erred in entering judgment before independently deciding the best interests of the children, we must vacate the custody order and remand to the trial court for a de novo hearing on the best interests of the children." ____ Mich App at _____.

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Capitol Corner

by State Court Administrative Office, Friend of the Court Bureau Staff

Between the last publication of the Pundit in October 2004, and the close of the legislative session at the end of December 2004, the following bills have been signed into law. To view these public acts and other legislation please go to: http://www.michiganlegislature.org/.

Public Act 376 (formerly House Bill 5472) amends Michigan Divorce Law and became effective **October 11, 2004**. The Act provides that the prosecuting attorney or FOCs if served with a notice that a judgment of divorce is going to be entered may enter an appearance in the cause if there are concerns about the interest of the children or the public good. Prior to PA 376, FOCs and prosecutors were required to appear if they were served with a notice that a judgment of divorce was going to be entered by the court. PA 376 also eliminates the appearance fee.

Public Act 481 (formerly Senate Bill 1450) amends the Estates and Protected Code and became effective **October 1, 2005.** The Act requires the personal representative of an estate to provide the friend of the court the names of decedent's surviving spouse and the heirs of the estate.

Public Act 482 (formerly Senate Bill 1449) adds a new Section 418 to the Insurance Code and became effective **December 28, 2004**. The Act authorizes an insurance company to voluntarily cooperate with the IV-D agency by identifying child support payers (with arrearages) who are to receive settlements or awards.

Public Act 483 (formerly Senate Bill 1448) would amend the Support and Parenting Time Enforcement Act and becomes effective **October 1, 2005.** The Act requires the IV-D agency to notify the national child support information clearinghouses and provide the names of each child support payers who have arrearages that exceed two times the monthly amount of periodic support payments.

Public Act 484 (formerly Senate Bill 1447) amends several sections of the Support and Parenting Time Enforcement Act and becomes effective **January 1, 2006.** The Act would allow the IV-D agency to place a lien against distribution from a decedent's estate, a claim for personal injury negligence, or death settlement, civil judgment, worker's compensation order, settlement, voluntary payment, redemption order, or an arbitration award. The Public Act also lists some assets that are not subject to lien.

Public Act 542 (formerly Senate Bill 727) amends the Child Custody Act and became effective **January 3, 2005**. The Act establishes a rebuttable presumption that a parent's actions and decisions are in the child's best interest. The Act sets forth the circumstances that must be present for an individual to file a motion for grandparenting time. The grandparent seeking grandparenting time would have to prove by clear and convincing evidence that grandparenting time is in the child's best interests for the court to order grandparenting time. The Act lists the factors the court must consider when ordering

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EXCERPT [Whether the order for arbitration authorized arbitration of the change-of-domicile issue.]: "Plaintiff claims that the arbitration agreement did not authorize the arbitrator to decide the change in domicile issue….Defendant argues the issue of change of domicile is covered under the catchall language of (G)…. Plaintiff contends that change of domicile is too important of an issue to fall within the catchall provision, but the consent order does not contain any restriction stating that the catchall language of (G) only applies to minor issues. The consent order clearly states that the parties can raise any other issue. It does not state that the parties are limited to raising [only] minor issues. Because we must enforce the actual terms of the agreement as written, plaintiff's argument is without merit." _____ Mich App at ____.

EXCERPT [Whether the arbitrator harbored bias against Middle Eastern fathers.]: "Any negative mention of a traditional aspect of a culture or ethnicity raises a flag of concern with us. A closer review of the statement, however, demonstrates that there is no stereotypical meaning. The arbitrator seems to be stating that plaintiff, as a particular person, was antagonistic towards defendant and apparently women in general. He appears to be stating that plaintiff demonstrated a belief in male dominance that is consistent with the historic prevalence of patriarchal social structures. Although the choice of wording is questionable, the comment does not give us the impression of true bias. While we must be cognizant of [ethnic] stereotyping, we cannot let our caution blind us to actual historic tradition. After a thorough reading of the quote, we conclude that plaintiff's claim is without merit."

"This Court has not extensively dealt with MCL 600.5081(2)(b), but it is nearly identical to the language of MCR 3.602(J)(1)(b), which deals with vacating arbitration awards in general. This Court has stated that the partiality or bias that would allow us to overturn an arbitration award 'must be certain and direct, not remote, uncertain or speculative.' Belen v Allstate Ins Co, 173 Mich App 641, 645; 434 NW2d 203 (1988). Given that MCL 600.5081(2)(b) uses the same language, we apply the same standard, and it is clear that the trial court did not err in refusing to vacate the award. At most, the comment leaves one with a vague impression of possible bias or prejudice. There is no concrete indication of bias, and any attempt to demonstrate bias would be mere speculation. Because this is insufficient to allow a court to vacate an arbitration award, we conclude that the trial court did not err in denying plaintiff's motion." ____ Mich App at _____.

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grandparenting time. The Act requires the court to state on the record its reasons for granting or denying grandparenting time. The Act also provides that a grandparenting time motion may be referred for domestic relations mediation.

Public Act 548 (formerly Senate Bill 1319) amends the Office of Child Support Act and became effective **January 3, 2005**. The Act requires the State Disbursement Unit to disburse (within one year of the effective date of the act to three counties, and to the entire state within two years) child support electronically to child support recipient's financial institution or to a special account that may be accessed by use of an electronic access card.

Public Act 564 (formerly House Bill 4654) amends Office of Child Support Act by adding Section 3b. The Act becomes effective **June 1, 2005.** The Director of the Department of Human Services is to designate a period of not less than 90 days as a child support arrearage amnesty period. If the payer applies for and is eligible for the amnesty program, criminal and civil penalties for failure to pay child support would be waived. The Office of Child Support is required to notify payers who may be eligible for amnesty at least 60 days before the start of the amnesty period.

Public Act 567 (formerly House Bill 5259) amends the Friend of the Court Act and becomes effective **June 1, 2005**. The FOC Office will not initiate enforcement to collect a child support payer's arrearage while the payer is participating in the amnesty program.

Public Act 568 (formerly House Bill 5262) amends the Penal Code and becomes effective **June 1, 2005.** The Act establishes that a child support payer who participates in the child support amnesty program could not be prosecuted for failure to pay child support.

Public Act 569 (formerly House Bill 5372) amends the Support and Parenting Time Enforcement and took effect **January 3, 2005**. The Act requires that a child support payer arrested on a felony non-support warrant must remain in custody until the preliminary examination unless the payer deposits a cash performance bond.

Public Act 570 (formerly House Bill 5373) amends the Michigan Penal Code and became effective **January 3, 2005,** to provide that, child support payers arrested for criminal nonsupport must remain in custody unless they deposit a cash bond of not less than $500.00 or 25 percent of the arrearage, whichever is greater. Unless the child support payer demonstrates good cause, the court would continue the bond. The court can set the bond at an amount not more 100 percent of the arrearage plus court costs. The bond requirement would be entered into the Law Enforcement Information Network (LEIN). A civil warrant issued under the Support and Parenting Time Enforcement Act would be recalled if the payer has been arrested on a felony warrant.

NOTE: House Bills 5468-5474 (Marriage Preservation Bill Package) became Public Acts However, these Acts will not become law because the bills were tie-barred to House Bill 5467 which was vetoed by the Governor.

FYI

by State Court Administrative Office, Friend of the Court Bureau Staff

Carl L. Gromek, who as served as Michigan Supreme Court Chief of Staff for the past four years, will also now serve as State Court Administrator.

On January 6, 2005 – Michigan Supreme Court Justice **Clifford W. Taylor** was chosen as the new Chief Justice of the Michigan Supreme Court.

Friend of the Court Grievance Reports were due **January 18, 2005**. Friends of the Court should submit one report using the excel spreadsheet that lists all grievances filed for 2004.

Friend of the Court Statistical Reports-(the SCAO 41) are due **March 22, 2005**. The Friends of the Courts only need to complete portions of the report that are not provided by the MICSES system.

First quarter Access and Visitation expenditure reports and surveys were due **January 15, 2005.**

SCAO web site now has a "Self-Help Center" which replaces "About the Courts". The "Self Help Center can be found at: http://courts.michigan.gov/scao/selfhelp/selfhelphome.htm. This site is designed to help citizens find legal assistance and learn about Michigan law. This site is very useful for citizens who decide to represent themselves. **However, this site does not provide legal advice.**

The National Council of Juvenile & Family Court Judges has published a bench guide for Judges for custody cases involving domestic violence. The bench guide can be found at: http://www.ncjfcj.org/dept/fvd/publications/main.cfm?Action=PUBGET&Filename=Complete_Guide.pdf

Information regarding Federal Office of Child Support Enforcement's Section 1115 Demonstration Grants can be found at: **http://www.acf.hhs.gov/grants/open/HHS-2005-ACF-OCSE-FD-0006.html.** Only State Title IV-D agencies or the umbrella agencies of which they are a part are eligible to apply for these grants.